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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,552	11/08/2001	John Ruckart	36968/262396 (BS 001252)	6895
7590	12/27/2004		EXAMINER	
KILPATRICK STOCKTON LLP			RHODE JR, ROBERT E	
JOHN S. PRATT			ART UNIT	PAPER NUMBER
1100 PEACHTREE STREET			3625	
SUITE 2800				
ATLANTA, GA 30309			DATE MAILED: 12/27/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/007,552	RUCKART, JOHN	
	Examiner	Art Unit	MW
	Rob Rhode	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 November 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 13-22 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 - 12 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 November 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's election without traverse of Group I in the reply filed on 11-15-04 is acknowledged.

Drawings

The drawings are objected to because of the shading at the top of Figure 4, which needs to be removed. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

In Claims 1 - 7, the claimed invention is directed to non-statutory subject matter. The claim is directed to a process that does nothing more than manipulate an abstract idea. There is no practical application in the technological arts. See *In re Musgrave*, 167 USPQ 280 (CCPA 1970) and *In re Johnston*, 183 USPQ 172 (CCPA 1974). For example in claim 1, the invention in the body of the claim does not recite the use of nor incorporate any technology in carrying out the recited method steps. Thereby, the claims are not statutory. If the invention in the body of the claim is not tied to the technological arts, environment or machine, the claim is not statutory. See *Ex parte Bowman*, 61 USPQ2d 1665, 1671 (BD. Pat. App. & Inter. 2001) [Unpublished] and note MPEP 2106 IV 2(b). While *Bowman* is not precedential, it has been cited for its analysis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 3, 7 - 9 and 12 are rejected under 35 U.S.C. 102(b) as being unpatentable over Rubin (US 6,078,897).

Regarding claim 1 and related claim 8, Rubin teaches a method and computer readable medium for conveying sales options comprising: offering a plurality of telecommunications related products to a customer; receiving a selection from said customer; determining an offering price for said selection, employing a progressive discount; and presenting said offering price to said customer (see at least Abstract, Col 2, lines 24 – 33 and Figures 2 and 3). Please note that Rubin does not specifically disclose telecommunications related products. However, Rubin does disclose products. Moreover, the type or kind of products such as telecommunications is considered non-functional descriptive material and thereby is given little patentable weight. The phrase(s) and or word(s) are given little patentable weight because the claim language limitation is considered to be non-functional descriptive material, which does not patentably distinguish the applicant's invention from Rubin. Thereby, the non-fictional descriptive material is directed only to the kind/type of product (. i.e. telecommunications - which is stored data) and therefore does not affect either the structure or method/process of Rubin, which leaves the method and system unchanged.

Regarding claim 2 and related claim 9, Rubin teaches a method, wherein said progressive discount comprises: providing a greater discount upon selection of at least one of a greater number and a higher level of products (see at least Col 2, lines 24 – 33).

Regarding claim 3, Rubin teaches a method, wherein determining an offering price for said selection, employing a progressive discount, further comprises: accessing a predetermined pricing table to determine a product price, wherein said selection comprises at least one product; and if more than one product is selected, summing the product prices (see at least Figures 2 and 3).

Regarding claim 7 and related claim 12, Rubin teaches a method, further comprising: providing an opportunity for said customer to change said selection; if customer changes said selection, receiving customer's changed selection; determining an offering price for customer's changed selection; and presenting said offering price to said customer (see at least Col 9, lines 1 – 12).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rubin (US 6,078,897) in view of “Designing a purchase order system for multiple variables”; Roger J Gagnon; Industrial Management; Norcross; Mar/Apr 1997 and hereafter referred to as “Variables”.

Rubin substantially discloses and teaches the applicant's invention.

While Rubin does disclose using a formula to calculate an offering price, the reference does not specifically disclose and teach a method, wherein determining an offering price for said selection, employing a progressive discount further comprises: accessing a predetermined pricing table having a product number, a product base price, and a discount rate to determine a product price wherein said selection comprises at least one product; and summing the product prices employing a formula.

On the other hand and in the same area of calculating a discount, Variables for claim 4 teaches a method, wherein determining an offering price for said selection, employing a progressive discount further comprises: accessing a predetermined pricing table having a product number, a product base price, and a discount rate to determine a product price wherein said selection comprises at least one product; and summing the product prices employing a formula. Please note that Variables does specifically disclose the exact formula cited by the applicant. However, Variable does produce the same results and thereby for examination purposes will be considered equivalent.

It would have been obvious to one of ordinary skill in the art at the time if the invention to have provided the method and computer medium of Rubin with the method and computer medium of Variables to have enabled a method and computer readable

medium wherein determining and offering price for said selection, employing a progressive discount further comprises: accessing a predetermined pricing table having a product number, a product base price, and a discount rate to determine a product price wherein said selection comprises at least one product; and summing the product prices employing a formula - in order to calculate product prices. Rubin discloses a method and computer medium for conveying sales options comprising: offering a plurality of telecommunications related products to a customer; receiving a selection from said customer; determining an offering price for said selection, employing a progressive discount; and presenting said offering price to said customer (see at least Abstract, Col 2, lines 24 –33 and Figures 2 and 3). Variables discloses a method wherein determining and offering price for said selection, employing a progressive discount further comprises: accessing a predetermined pricing table having a product number, a product base price, and a discount rate to determine a product price wherein said selection comprises at least one product; and summing the product prices employing a formula (Pages 3 and 4). Therefore, one of ordinary skill in the art would have been motivated to extend Rubin with a method wherein determining and offering price for said selection, employing a progressive discount further comprises: accessing a predetermined pricing table having a product number, a product base price, and a discount rate to determine a product price wherein said selection comprises at least one product; and summing the product prices employing a formula.

Claims 5, 6, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rubin (US 6,078,897) in view of Israelski (US 2002/0071526 A1).

Rubin substantially discloses and teaches the applicant's invention.

However, Rubin does not specifically disclose and teach a method and computer medium, further comprising: receiving information about customer usage of said plurality of products; and recommending products based on received information about customer usage and further comprising: providing to said customer, an incremental offering price of an upgrade to said customer's selection.

On the other hand and regarding claim 5 and related claim 10, Israelski teaches a method and computer medium, further comprising: receiving information about customer usage of said plurality of products; and recommending products based on received information about customer usage (see at least Abstract and Para 0010).

Regarding claim 6 and related claim 11, Israelski teaches a method, further comprising: providing to said customer, an incremental offering price of an upgrade to said customer's selection (see at least Para 0029).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the method and computer medium of Rubin with the method and

computer medium of Israelski to have enabled a method and computer medium further comprising: receiving information about customer usage of said plurality of products; and recommending products based on received information about customer usage and further comprising: providing to said customer, an incremental offering price of an upgrade to said customer's selection – in order to provide upgrade choices to a customer based on usage. Rubin discloses a method and computer medium for conveying sales options comprising: offering a plurality of telecommunications related products to a customer; receiving a selection from said customer; determining an offering price for said selection, employing a progressive discount; and presenting said offering price to said customer (see at least Abstract, Col 2, lines 24 –33 and Figures 2 and 3). Israelski discloses a method and computer medium, further comprising: receiving information about customer usage of said plurality of products; and recommending products based on received information about customer usage and further comprising: providing to said customer, an incremental offering price of an upgrade to said customer's selection. (Abstract and Para 0010). Therefore, one of ordinary skill in the art would have been motivated to extend the method and computer medium of Rubin with a method and computer medium for further comprising: receiving information about customer usage of said plurality of products; and recommending products based on received information about customer usage and further comprising: providing to said customer, an incremental offering price of an upgrade to said customer's selection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Rob Rhode** whose telephone number is **(703) 305-8230**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(703) 308-1344**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 308-1113**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

(703) 872-9306 [Official communications; including

After Final communications labeled
"Box AF"]

(703) 746-7418 [Informal/Draft communications, labeled

"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.

RER



Jeffrey A. Smith
Primary Examiner